IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

MICHAEL WALTON, REBECCA CANTRELL, and ROSIE McNAIRY, on behalf of themselves and all others similarly situated — PLAINTIFFS

v. — No. 1:98cv288-D-D

FRANKLIN COLLECTION AGENCY, INC. — DEFENDANT

OPINION

Presently before the court is the Defendant's motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure.[1] After considering only the pleadings in this action, the court finds that the motion should be denied.

Factual and Procedural Background

The Plaintiffs are individuals who received medical services at Gilmore Memorial Hospital in Amory, Mississippi, and then failed to pay their bills for those services. The Defendant is a collection agency with which Gilmore Memorial Hospital contracted for the purpose of collecting the debts owed by the Plaintiffs. In this action, the Plaintiffs claim inter alia that the Defendant violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq., by seeking and obtaining awards of attorney's fees for work performed by non-attorneys. In the amended complaint, the Plaintiffs allege the following facts:

> Defendant's in-house litigation department which is staffed by "non-lawyers" reviewed Plaintiffs' files, [and] drafted the complaints to be filed against such Plaintiffs. The complaints were then forwarded to the Defendant's retained attorney who simply executed the said complaints which were then filed by Defendant. The aforesaid complaints, in each instance, made a demand for attorney's fees. The said demand for attorney's fees had no relationship whatsoever to the services rendered by an attorney as the majority of the work involved was performed by "non-lawyers in the Defendant's legal department".

(Amended Complaint, pp. 2-3).

Discussion

Considering the facts alleged in the pleadings, this court cannot say that it appears beyond

[1]The court declines to address the Defendant's motion under Rule 56 at this juncture.

doubt that the Plaintiffs can prove no set of facts in support of their claims which would entitle them to relief. See Campbell v. City of San Antonio, 43 F.3d 973, 975 (5th Cir. 1995). Of course, even if the facts alleged in a complaint give rise to a cause of action, dismissal under Rule 12(b)(6) may still be appropriate if a successful affirmative defense appears clearly on the face of the pleadings. Clark v. Amoco Prod. Co., 794 F.2d 967, 970 (5th Cir. 1986). Accordingly, the Defendant has asserted a number of affirmative defenses: claim preclusion, issue preclusion, the Rooker-Feldman Doctrine, and the statute of limitations.

> Claim preclusion, or res judicata, bars the litigation of claims that either have been litigated or should have been raised in an earlier suit. The test for claim preclusion has four elements: (1) [t]he parties are identical or in privity; (2) the judgment in the prior action was rendered by a court of competent jurisdiction; (3) the prior action was concluded to a final judgment on the merits; and (4) the same claim or cause of action was involved in both actions. To determine whether two suits involve the same claim under the fourth element, [the Fifth Circuit] has adopted the transactional test of the Restatement (Second) of Judgments. Thus, the critical issue is whether the two actions under consideration are based on "the same nucleus of operative facts."

Southmark Corp. v. Coopers & Lybrand, 163 F.3d 925, 934 (5th Cir. 1999) (citations omitted). In this case, the Defendant cannot meet the fourth element of the claim preclusion test – that the same claim was involved in both actions. The first action is one for money owed. The second action is inter alia one for violation of the FDCPA. These two actions are not based on the same nucleus of operative facts. In the first, the nucleus of operative facts involves the failure of the Plaintiffs to pay their hospital bills. In the second, the nucleus of operative facts involves the subsequent conduct of the Defendant in trying to collect on those hospital bills. Indeed, the facts in the first action are irrelevant to the second action; an action under the FDCPA is not contingent upon the validity of the underlying debt. McCartney v. First City Bank, 970 F.2d 45, 47 (5th Cir. 1992). Therefore, the doctrine of claim preclusion does not bar the present action under the FDCPA. Accord Whitaker v. Ameritech Corp., 129 F.3d 952, 958 (7th Cir. 1997) ("Debt attachment and debt collection are matters separated by time and purpose.").

The court has little difficulty further finding that the remaining affirmative defenses asserted by the Defendant also fail to bar this action.

> Issue preclusion, formerly known as collateral estoppel, applies when the following elements are met: (1) the issue at stake must be identical to the one involved in the prior action; (2) the issue must have been actually litigated in the prior action; and (3) the determination of the issue in the prior action must have been a part of the judgment in that earlier action.

Southmark Corp., 163 F.3d at 932. The Defendant fails to meet the second element of this test. That is, it fails to show that the issue in this case – primarily whether the Defendant employed a deceptive debt collection practice – was actually litigated in the prior action. Therefore, the doctrine of issue preclusion fails to bar the present action. The Rooker-Feldman Doctrine provides "that inferior federal courts do not have the power to modify or reverse state court judgments." Reitnauer v. Texas Exotic Feline Foundation, Inc., 152 F.3d 341, 343 (5th Cir. 1998) (citing Rooker v. Fidelity Trust Co., 263 U.S. 413, 415, 44 S. Ct. 149, 68 L. Ed. 362 (1923); and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476 & 482, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983)). In this case, the Plaintiffs do not ask this court to modify or reverse any state court judgment. The Plaintiffs merely claim inter alia that the Defendant's conduct in a state court proceeding violated the FDCPA. Therefore, the Rooker-Feldman Doctrine fails to bar this action. Lastly, the one-year statutes of limitations applicable to a number of the claims in this action fail to bar this action because, as the Defendant admits, "the collection complaints were filed less than a year before the Complaint in the case at bar." (Defendant's Rebuttal, p. 12).

## Conclusion

The Defendant's motion to dismiss should be denied. A separate order in accordance with this opinion shall issue this day.

This the ____ day of May 1999.

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United States District Judge

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FRANKLIN COLLECTION AGENCY, INC. DEFENDANT

ORDER DENYING MOTIONS TO DISMISS and
RULING ON OTHER MOTIONS

Pursuant to an opinion issued today, it is hereby ORDERED that

(1) the Defendant's motion to dismiss (docket entry 4) is DENIED;

(2) the Defendant's motion to dismiss amended complaint (docket entry 11) is DENIED;

(3) the Defendant's motion to strike certain affidavits (docket entry 11) is DENIED AS MOOT;

(4) the Defendant's motion for leave to file nunc pro tunc response (docket entry 10) is GRANTED;

(5) the Plaintiffs' motion to strike motion to dismiss amended complaint (docket entry 14) is DENIED;

(6) the Plaintiffs' motion to strike memorandum of supplemental authorities (docket entry 21) is DENIED; and

(7) the Plaintiffs' motion for sanctions (docket entry 21) is DENIED.

SO ORDERED, this the ____ day of May 1999.

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United States District Judge